

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.7800 OF 2014

1 Kalawati w/o Brijlal Joshi,
age: 65 years, Occ: Household,
R/o Central Hanuman Latur,
Tq. and District Latur.

2 Vinay s/o Brijlal Joshi,
age: 34 years, Occ: Agril.,
R/o Central Hanuman Latur,
Tq. and District Latur.

3 Vishal s/o Brijlal Joshi,
age: 32 years, Occ: Agril.,
R/o Central Hanuman Latur,
Tq. and District Latur.

Petitioners

Versus

1 The State of Maharashtra,
through the Secretary in the
Department of Urban Development,
Mantralaya, Mumbai.

2 The Collector, Latur,
Tq. and District Latur.

3 The Town Planner,
Town Planning Office,
Latur, Tq and District Latur.

4 The Latur Municipal Corporation,
Latur, through its Commissioner.

Respondents

Mr.A.N.Irpatgire, advocate for petitioners.

Mr.G.R.Ingole, A.G.P. For Respondents No.1 & 2.

Mr.V.D.Hon, Senior Counsel i/by Mr.A.V.Hon, advocate for
Respondent No.4.

CORAM : R.M.BORDE &

P.R.BORA, JJ.

DATE : 28th January, 2015

ORAL JUDGMENT (Per R.M.Borde, J.):

1 Heard. Rule. Rule made returnable forthwith and heard finally by consent of learned Counsel for respective parties.

2 Petitioners are praying for issuance of writ, order or direction thereby directing /declaring that reservation provided in the Development Plan dated 02.01.2002, through notification No.TPS- 3700/471 /CR-153/2000/UD-30 in respect of land bearing Survey No.14, Gat No.16, admeasuring 20,000 square meters, bearing site Nos.143 and 144, sitaute at Mauje Vasangaon, Taluka and District Latur, be deemed to have lapsed and land is released from reservation by virtue of provisions of section 127 of the Maharashtra Regional and Town Planning Act.

3 Final development plan for Latur city has been declared on 02.01.2002 and the subject property has been earmarked for garden, bearing site no.143 and primary school, bearing site no.144. Petitioners contend that since municipal authority did not take steps for acquiring the property within the time stipulated, notice dated 22.04.2013 came to be issued by the petitioners calling upon the Municipal Corporation to acquire the property under reservation. However, Municipal Corporation did not take any steps. The petitioners, therefore, tendered an application on 05.05.2014 calling upon the Municipal Corporation to act in accordance with the provisions of S.127 M.R.T.P. Act. Petitioners contend that within the time stipulated under section

127 of the Act, respondent – Municipal Corporation did not take steps and did not initiate proceedings for acquisition of land, Reservation, allotment or designation under final development plan prepared by the State Government for Latur Municipal Corporation shall be deemed to have lapsed and the land is available for petitioners for development as in case of adjacent land holder.

4 Learned counsel for respondents has not disputed the factum of service of notice on Municipal Corporation by the petitioners on 22.04.2013 and revised notice/application dated 05.05.2014. It is also admitted that no steps, as contemplated under the provisions of M.R.T.P. Act, have been initiated by the Municipal Corporation.

5 In the matter of **Girnar Traders (II) V/s State of Maharashtra & others** reported in **(2007) 7 SCC 555** the Supreme Court has observed thus :

54 If the acquisition is left for time immemorial in the hands of the authority concerned by simply making an application to the State Government for acquiring such land under the LA Act, 1894, then the authority will simply move such an application and if no such notification is issued by the State Government for one year of the publication of the draft regional plan under Section 126 (2) read with Section 6 of the LA Act, wait for the notification to be issued by the State Government by exercising suo motu power under Sub Section (4) of Section 126; and till then no declaration could be made under Section 127 as regards lapsing of reservation and contemplated declaration of land being released and

available for the landowner for his utilisation as permitted under Section 127. Section 127 permitted inaction on the part of the acquisition authorities for a period of 10 years for dereservation of the land. Not only that, it gives a further time for either to acquire the land or to take steps for acquisition of the land within a period of six months from the date of service of notice by the landowner for dereservation. The steps towards commencement of the acquisition in such a situation would necessarily be the steps for acquisition and not a step which may not result into acquisition and merely for the purpose of seeking time so that Section 127 does not come into operation.

57 It may be noted that the legislature while enacting Section 127 has deliberately used the word “steps” (in plural and not in singular) which are required to be taken for acquisition of the land. On construction of Section 126 which provides for acquisition of the land under the MRPT At, it is apparent that the steps for acquisition of the land would be issuance of the declaration under Section 6 of the LA Act. Clause (C) of Section 126 (1) merely provides for a mode by which the State Government can be requested for acquisition of the land under Section 6 of the LA Act. The making of an application to the State Government for acquisition of the land would not be a step for acquisition of the land under reservation. Sub Section (2) of Section 126 leaves it open to the State Government either to permit the acquisition or not to permit, considering the public purpose for which the acquisition is sought for by the authorities. Thus, the steps towards acquisition would really commence when the State Government permits the acquisition and as a result thereof publishes the declaration under section 6 of the LA Act.”

6 In the instant matter, since the Municipal Corporation did not take steps as mandated in **Girnar Traders (II) Vs. State of Maharashtra & others** (*supra*), matter and no notification under section 6 has been issued, reservation / allotment or designation under final development plan declared by the State Government in relation to the property under question belonging to petitioners shall be deemed to have lapsed. Petition, thus, deserves to be allowed and the same is accordingly allowed.

7 It is declared that designation/reservation/allotment under final development plan prepared for Latur Municipal Council/Corporation prescribing reservation under Site No. 143 and Site No. 144 to the extent of petitioners' property shall be deemed to have lapsed and the land is available for petitioners for development as in case of the adjacent land holder. Respondent – State Government shall issue appropriate notification as contemplated by section 127(2) of M.R.T.P. Act, as expeditiously as possible, preferably within six months from today.

8 Rule is accordingly made absolute. In the facts and circumstances of the case, there shall be no order as to costs.

P.R.BORA
JUDGE

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R.M.BORDE
JUDGE